

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

FILED-CLERK  
U.S. DISTRICT COURT  
05 MAY -6 PM 12:26  
TX EASTERN-MARSHALL

IN RE: § CASE NO. 01-36543 SR  
§ Pending in the Eastern District of  
22 ACQUISITION CORP., a Delaware § Pennsylvania Bankruptcy Court  
Corporation, §  
§ CHAPTER 11  
§

EDITH SIMMONS, Individually §  
and on Behalf of the Estate of §  
VELMA CHERRY, DECEASED; §  
and BRENSON CHERRY, §

vs. §

CASE NO. 2-05CV-169-TGW

22 ACQUISITION CORP., d/b/a §  
MERRITT PLAZA REHABILITATION §  
CENTER; JOHN MCDONALD, D.O.; §  
HOSPICE OF EAST TEXAS; §  
ROY FREEBOURN; DONALD J. §  
MCKAY; TOTAL HEALTHCARE §  
CONSULTANTS OF TEXAS, LLC, §  
d/b/a ZA CONSULTING OF TEXAS, §  
L.L.C.; GRACE CARE OF TEXAS, §  
INC. a/k/a PROVIDENT CARE §  
CENTERS OF TEXAS, INC., a/k/a §  
COMMUNITY CARE CENTER OF §  
MARSHALL; STEVEN FISHMAN; §  
ZA CONSULTING, L.L.C. and §  
GE HSF HOLDINGS, INC. §

GE HSF HOLDING, INC.'S NOTICE OF REMOVAL

PLEASE TAKE NOTICE THAT Defendant GE HFS HOLDINGS, INC., ("GEHFS"), hereby removes the above-captioned action (the "Removed Action") from the 71<sup>st</sup> Judicial District Court of Harrison County, Texas, Cause No. 03-0891, to this Court pursuant to 28 U.S.C. §§ 1334 and 1452 and Federal Rule of Bankruptcy Procedure 9027.

AS GROUNDS FOR SUCH Removal, GE HFS states as follows:

1. 22 Acquisition Corporation (“22 Acquisition”) is the reorganized debtor in the above-captioned Chapter 11 bankruptcy case pending in the United States Bankruptcy Court for the Eastern District of Pennsylvania (the “EDPA Bankruptcy Court”), Case No. 01-36543 (the “Bankruptcy Case”).

2. GEHFS was the primary secured creditor of 22 Acquisition pursuant to a pre-petition loan and security agreement between GEHFS and 22 Acquisition. As security for its secured claim, GEHFS was granted and held, among other things, a first position, valid and perfected lien and security interest in all of 22 Acquisition’s accounts, accounts receivable, other rights to payment of any kind, and all proceeds therefrom.

3. On or about June 9, 2004, the EDPA Bankruptcy Court entered an “Order: (I) Granting Motion Of GE HFS Holdings, Inc. For Approval Of Disclosure Statement And For Approval of Plan Solicitation And Voting Procedures; (II) Approving First Amended Disclosure Statement Accompanying First Modified Plan Of Reorganization Of 22 Acquisition Corp; And (III) Fixing Bar Date And Approving Bar Date Notice And Procedures Regarding ‘Other Administrative Claims’” (the “Disclosure Statement Order”). In the Disclosure Statement Order, the EDPA Bankruptcy Court expressly ordered that there would be, and expressly approved the form of, a “Notice Of Bar Date For Filing ‘Other Administrative Claims’” (the “OAC Bar Date Notice”). Consistent with a plan of reorganization (as filed and as confirmed with all modifications, the “Plan”) filed by GEHFS in the Bankruptcy Case, both the Disclosure Statement Order and the OAC Bar Date Notice, defining “Other Administrative Claims”, specified that Other Administrative Claims “are Tort Claims related to personal injury, property damage, products liability, wrongful death, or other similar alleged wrongs occurring on or after the November 28, 2001 filing date of the Bankruptcy Case.”

4. Both the Disclosure Statement Order and the OAC Bar Date Notice expressly provided that all Other Administrative Claims must be filed with the Clerk of the EDPA Bankruptcy Court by July 16, 2004 (the “OAC Bar Date”); and that every Other Administrative Claim that was not filed timely by the OAC Bar Date “shall be forever barred and disallowed, and shall not receive any payment in the Debtor’s Bankruptcy Case ” Id. (emphasis added).

5. In the Removed Action, the underlying claim of the Plaintiffs, from which all claims in the Removed Action derive, was an Other Administrative Claim against 22 Acquisition in the Bankruptcy Case. Accordingly, the Plaintiffs were obliged by the Disclosure Statement Order and the OAC Bar Date Notice to file that Other Administrative Claim with the Clerk of the EDPA Bankruptcy Court by the OAC Bar Date, or to have that Other Administrative Claim “forever barred and disallowed.”

6. The Plaintiffs indisputably received due and proper notice of the Disclosure Statement Order, the OAC Bar Date Notice, and the OAC Bar Date. In this regard, on June 17, 2004, a “Solicitation Package” in the Bankruptcy Case was sent to all of 22 Acquisition’s creditors and other interested parties, specifically including, without limitation, the Plaintiffs in care of their counsel. Each such Solicitation Package included, among other things, the Disclosure Statement Order and the OAC Bar Date Notice.

7. The Claims Register in the Bankruptcy Case shows that the Plaintiffs did not file any Other Administrative Claim by the OAC Bar Date. Accordingly, any Other Administrative Claim of the Plaintiffs (including their claim from which all claims in the Removed Action derive) has been finally adjudicated by the EDPA Bankruptcy Court to be “forever barred and disallowed” pursuant to the Disclosure Statement Order and the OAC Bar Date Notice (and as otherwise further described below).

8. Furthermore, on August 17, 2004, the EDPA Bankruptcy Court entered an “Order Confirming First Modified Plan Of Reorganization Of 22 Acquisition Corp. Proposed By GEHFS Holdings, Inc. Formerly Known As Heller Healthcare Finance, Inc. (Including Supplemental Modifications Dated As Of June 3, 2004 And July 26, 2004)” (the “Confirmation Order”). The Confirmation Order confirmed the Plan proposed by GEHFS and is further completely dispositive of all claims, including all Other Administrative Claims, that were claims against 22 Acquisition.

9. On or about March 9, 2005, the Plaintiffs joined GEHFS and other parties as Defendants in the Removed Action by filing their “Plaintiffs’ Second Amended Petition” (the “Amended Petition”) in the Removed Action. The Amended Petition was served on GEHFS on April 7, 2005.

10. The Amended Petition affects the administration of 22 Acquisition’s assets and bankruptcy estate in the Bankruptcy Case and the execution of the Plan confirmed by the Confirmation Order.

11. The Amended Petition also violates and collaterally attacks final adjudications made by the EDPA Bankruptcy Court in the Bankruptcy Case, including, without limitation, such adjudications made pursuant to the Disclosure Statement Order and the Confirmation Order.

12. Jurisdiction over the Removed Action is proper in this Court pursuant to 28 U.S.C. §§ 1334(b) and 1452 and some or all claims in the Removed Action may be referred to the bankruptcy court in this District pursuant to 28 U.S.C. §§ 157(a) and 157(b)(1).

13. Venue of the Removed Action is proper in this Court pursuant to 28 U.S.C. § 1409(a).

14. The Amended Petition presents a core proceeding pursuant to 28 U.S.C. §157 (b)(2) in which a bankruptcy court (after reference by this Court) has jurisdiction to enter a final order or judgment.

WHEREFORE, notice is given that the Removed Case is removed from the District Court for Harrison County, Texas to the United States District Court for the Eastern District of Texas.

This Notice of Removal is signed pursuant to Federal Rule of Bankruptcy Procedure 9011; and it is well grounded in fact and warranted by law. All process and pleadings regarding the Removed Action filed in the 71<sup>st</sup> Judicial District Court for Harrison County, Texas, which are available from the state court records are attached hereto as Exhibit "A".

DATED: May 5, 2005.

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**Attorneys for GE HFS HOLDINGS, INC.**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing GE HSF HOLDINGS, INC.'S NOTICE OF REMOVAL was served on the counsel of record listed below via U S mail this 5<sup>th</sup> day of May, 2005:

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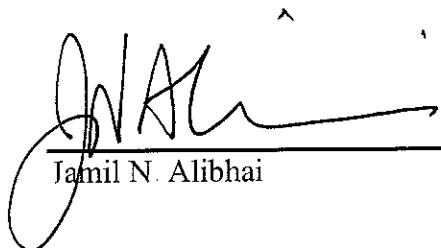
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**Civil Docket**

71st Judicial District

Case No. 03-0891

HARRISON County

May 31d, 2005

10:44am

EDITH SIMMONS, INDIV & ON BHLF OF EST  
 VELMA CHERRY, DECEASED & BRENSON  
 CHERRY vs. 22 ACQUISITION CORP., DBA  
 MERRIT PLAZA REHAB & LIVING CTR. &  
 JOHN MCDONALD

Filed : 08/26/2003

Status: Filed

Type: DAMAGE WITH-OUT MOTOR

Judge

Bonnie Leggat

Court Reporter

Lynn Skinner

TRUE COPY  
 of the Original hereof, I certify

*Berry Griffis*  
 District Court Clerk  
 Harrison County, Texas

*Joan Palmer*  
 Deputy Clerk

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 08/26/03 CITATION Issued -Defendant JOHN MCDONALD D O  
 09/05/03 CITATION RETRND TO ATTY FOR SERVICE Served - 22 ACQUISITION  
 CORP ET AL  
 09/11/03 CITATION Served - JOHN MCDONALD D O - Answer due: 10/06/03 -  
 SO  
 09/11/03 CITATION Served - JOHN MCDONALD D O - Answer due: 10/06/03  
 09/12/03 CITATION Served - JOHN MCDONALD D O - Answer due: 10/06/03 -  
 3  
 10/02/03 ORIGINAL ANSWER  
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 10/03/03 Answer Filed -Defendant 22 ACQUISITION CORP ET AL  
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 11/03/03 OTHER  
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**EXHIBIT****A**



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71st Judicial District

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### Events & Orders of the Court (cont.)

05/09/05 JURY TRIAL  
Set by agreement at s ch conf on 11/23/04